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1 belief is required to file and pay certain tax liabilities to the Department, including individual  
2 income taxes. *See* A.R.S. §§ 43-301, 43-501.

3 3. The Department filed a proof of claim establishing a priority claim in the amount of  
4 \$5,208.00. A true and accurate copy of the Department's *Original Proof of Claim* ("Claim")  
5 dated February 18, 2020 is No. 1-1 on the Court's Claims Register. In addition, the  
6 Department's Claim indicates that the Debtor has failed to file the tax return indicated below  
7 ("Outstanding Return"):  
8

9

<u>Income</u>	2011
<u>TPT</u>	Not Applicable
<u>WTH</u>	Not Applicable

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15 4. As indicated in the Department's Claim, the Debtor has failed to file all tax returns.  
16 Moreover, the Plan cannot be confirmed until such time that the Debtor files the Outstanding  
17 Return. Signed, dated, and non-redacted copies of the returns with all federal form W-2s and  
18 Federal Schedule A, as applicable, may be sent to Richard.Graves@azag.gov, which the  
19 Department will accept as filed on the date that they are received by the Attorney General's  
20 Office.  
21

22 5. The Department's Claim is entitled to priority treatment pursuant to 11 U.S.C.  
23 § 507(a)(8)(A). The Plan is required to provide payment in full of all priority claims, unless the  
24 claimant agrees otherwise. 11 U.S.C. § 1322(a)(2). Here, the Department has not agreed to  
25 different treatment than what Section 1322 requires and the Plan does not provide for the full  
26 payment of the Department's priority claim. Therefore, the Plan cannot be confirmed. 11

1 U.S.C. § 1325(a)(1).

2 6. The Department's Claim consists of liabilities that were either: (1) filed late and within  
3 two years of the current bankruptcy; or (2) filed after the commencement of this bankruptcy.  
4 These obligations are non-dischargeable under the "Two Year Rule" and the Department  
5 requests that language be included within an order of confirmation to clarify as much. 11  
6 U.S.C. §§ 523(a)(1)(B)(ii), 1328(a)(2), *In re Savaria*, 317 B.R. 395 (B.A.P. 9th Cir. 2004).  
7

8 The Department suggests the following:

9 To the extent that the Arizona Department of Revenue's non-dischargeable liabilities  
10 are not paid in full through pro rata distributions under the Debtor's Plan or through  
11 direct payments outside of the plan, the unpaid balance along with postpetition and  
12 post-confirmation interest shall **not** be discharged in accordance with 11 U.S.C. §§  
13 523(a)(1)(B)(ii) and 1328(a).

14 7. The Department reserves the right to amend, supplement, or withdraw its objection to  
15 confirmation.

#### 16 Conclusion

17 Any Chapter 13 plan proposed by the Debtor must provide for and eliminate the  
18 objections specified herein in order to be reasonable and to comply with applicable provisions  
19 of 11 U.S.C. § 1325. Since the Plan, as it is currently proposed, does not comply with 11  
20 U.S.C. § 1325, the Plan cannot be confirmed.  
21

22 WHEREFORE, the Department prays as follows:

23 1. That Confirmation of the proposed Chapter 13 Plan be denied, or in the  
24 alternative, that the Plan be amended or modified to remedy the Department's objections  
25 herein;  
26

2. That failure of the Debtor to amend or modify the Plan to conform with the Bankruptcy Code in a reasonable time, that the Court dismiss or convert this case to a Chapter 7; and

3. For such other and further relief as this Court deems proper.

RESPECTFULLY SUBMITTED this 15th day of April, 2020.

MARK BRNOVICH  
Attorney General

 

Christopher J. Dylla  
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Christopher J. Dylla  
Assistant Attorney General  
Attorney for the State of Arizona  
*ex rel.* Arizona Department of Revenue

ORIGINAL of the foregoing filed electronically this 15th day of April, 2020 with:

United States Bankruptcy Court  
District of Arizona

COPY of the foregoing sent by U.S. Mail or by email\* this 15th day of April, 2020 to:

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*Chapter 13 Trustee*

R. Scott Graves



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/s/ R. Scott Graves

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